REMARKS

This amendment is in response to the Office Action of January 9, 2006. In the Office Action, the Examiner rejected claims 1-3, 6-12 and 15-22, all claims in the application.

On page 4 of the Office Action, the Office Action is indicated to be *MADE FINAL*. However, this is the first office action subsequent to a Request for Continued Examination. However, the Request for Continued Examination was made after receiving an Advisory Action from the Examiner indicating that the Amendment B After Final raised "new issues." Therefore a first office action final would not be correct. On page 1 of the office action it is indicated to be *NON-FINAL*. Based on the above, the applicants must assume that the office action is non-final.

The Examiner first rejected claims 1-3, 6-12, 15-22 under 35 U.S.C. 112 for failing to properly support the negative limitation "without flat segments." Applicants have removed this language.

The Examiner rejected claims 1-3, 6-12, 15-22 under 35 USC 103(c) as being unpatentable over *Sandberg et al.* '446.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Applicants submit that the cited reference does not teach or suggest the limitations of amended independent claims 1 and 10.

Applicants have amended claims 1 and 10 to describe the mold plate having a laterally contoured region having a raised first surface and an oppositely facing raised second surface, directly aligned with said first raised surface through a thickness of said mold plate, and the first plate having a recessed first surface extending longitudinally and corresponding in shape to the raised second surface of said mold plate and the second plate having a recessed second surface extending longitudinally and corresponding in shape to the raised first surface of said mold plate, said first and second recessed surfaces of said first and second plates respectively each forming a channel that closely conforms around said first and second raised surfaces respectively of said contoured region of said mold plate.

Sandberg describes intermittent, offset ribs with curved profiles on top and flat ribs on the bottom in Figure 7. The upper surface of the fill plate 82 in Sandberg is described at column 5, lines 6-9 as having rib forming channels to form the ribs 266. These ribs are shown as being flat and not curved. Also, the rib forming projections formed on the bottom surface of the mold plate would be offset from any rib forming projections 104 used to form the ribs 262, 264 on a top side of the patty shown in Figure 7.

Thus, the claim limitation that the contoured region of the contoured region having a raised first surface and an oppositely facing raised second surface,

directly aligned with said first raised surface through a thickness of said mold plate, is not described in this reference.

By shaping both the mold plate with upper and lower raised regions directly aligned, i.e., in registry, though a thickness of the mold plate and having recessed regions that each conform around the upper and lower raised regions, the present invention can form three dimensional curved profile patty shapes that simulate the shapes of common food items such as drumsticks or meatballs.

According to the invention, products that have a rounded cross section, which could not be formed by the heretofore known reciprocating mold plate, can be substantially approximated by a molded product having curvatures in the horizontal and vertical planes. A heretofore known rounded shape such as a sphere could not be molded and thereafter removed from a reciprocating mold plate due to its geometry. Unlike a disk shape that has straight vertical sidewalls, a sphere molded within a reciprocating mold plate, cannot be removed with a downward push, i.e., in order to form the sphere the mold plate provides no opening or clearance that can be used for the sphere to exit the cavity.

The present invention overcomes the problem by using a horizontal profile of the cavity opening being substantially continuously curved on both fore and aft sides and having straight vertical sidewalls, and a vertical profile of the cavity being curved along both top and bottom sides, projected in the longitudinal direction of reciprocation of the mold plate. Once cooked, the edges between the horizontal perimeter and the vertical profile are rounded or smoothed, forming a substantially rotationally symmetrical cooked product.

The Examiner dismisses the shape aspects of the claims by citing *In re Dailey,* 149 USPQ 47. This case is cited for Examiner's to support an obviousness rationale in MPEP 2144.04 which also cautions (italics added):

"2144.04 Legal Precedent as Source of Supporting Rationale [R-1]

As discussed in **MPEP § 2144**, if the facts in a prior legal decision are sufficiently similar to those in an application under examination, the examiner may use the rationale used by the court. Examples directed to various common practices which the court has held normally require only ordinary skill in the art and hence are considered routine expedients are discussed below. *If the applicant has demonstrated the criticality of a specific limitation, it would not be appropriate to rely solely on case law as the rationale to support an obviousness rejection.*

Applicants have demonstrated that shape in the context of creating three dimensional molded patties using a reciprocating mold plate can only be accomplished by an inventive arrangement of the raised regions of the mold plate, being aligned, and the recessed regions of the first and second plates that face the mold plate, closely conforming around the aligned raised regions. The blanket citation of citation of *In re Dailey*, 149 USPQ 47, is not appropriate in this case.

The Examiner dismisses the forming of shapes to simulate a drumstick to be obvious because it is "within the skill of an ordinary artisan." However, a statement that modifications of the prior art to meet the claimed invention would have been well within the ordinary skill of the art at the time the claimed invention was made is not sufficient to establish a *prima facie* case of obviousness without some objective reason to modify the teachings of the references. *See Ex parte*

Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab,* 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000) (Court reversed obviousness rejection involving technologically simple concept because there was no finding as to the principle or specific understanding within the knowledge of a skilled artisan that would have motivated the skilled artisan to make the claimed invention); *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999) (The level of skill in the art cannot be relied upon to provide the suggestion to combine references.).

Additionally, the Examiner cites *In re Japiske*, 86 USPQ 70 for the proposition that the reversing the position of the plates would be obvious because the operation of the devise is not otherwise modified. Particularly as amended, claims 1 and 10 set forth a device that operates differently in that the device can create molded patties having rounded three dimensional shapes. The device disclosed in Sandberg produces alternating ribs, with flat ribs on the bottom. The caution of MPEP 2144.04 italicized above is also appropriate here and the rejection is not appropriate.

Applicants submit that independent claims 1 and 10 distinguish *Sandberg* in a non-obvious way and claims 1-3, 6-12 and 15-22 should all be allowable.

The Examiner disregards important limitations in claims 19 and 20 that the formed product is substantially rotationally symmetrical. These attributes are also set forth in new independent claim 23.

None of the general suggestions in *Sandberg* would lead one of skill in the art to duplicate the horizontal profile of the cavity with the vertical profile of the cavity in order to simulate a three dimensional product having a rotationally symmetrical rounded cross section.

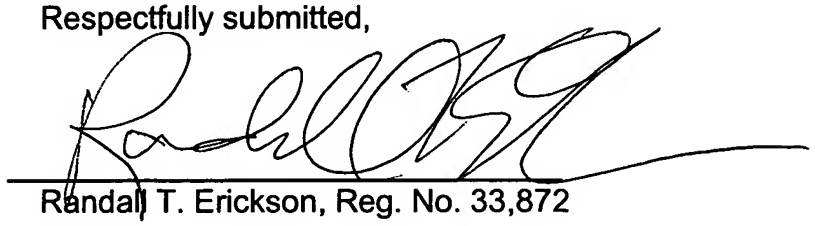
Applicants' tooling solves a difficult problem in the molding of food products, that is, the problem of molding a rounded, natural shape with no significant flat spots, using a reciprocating mold plate, wherein the molded products can be knocked out of open cavities.

Such products include simulated chicken drumsticks and spherical meatballs. The shapes of these two products are not arbitrary or merely design choice. These product shapes are popular, consumer accepted shapes accounting for a significant percentage of American household dinners. Applicants' invention provides an ingenious arrangement wherein a conventional and popular food product can be molded using a high production, reciprocating-mold plate forming machine and can simulate realistically the original popular three-dimensional shapes of the popular food products.

Applicants submit that dependent claims 19 and 20, and new claims 23-26 also describe a patentable invention and an important improvement over existing tooling for forming shaped food products.

Applicants submit that all claims are in condition for allowance and request issuance of the application.

Respectfully submitted,

By: 

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